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ABSTRACT

This theme issue provides guidance on school district compliance with the Individuals with Disabilities Education Act (IDEA) in the inclusion of students with disabilities. It provides a summary and analysis of four recent decisions in federal appellate courts, which all affirmed the right of students with significant disabilities to attend regular education classes full time when the educational benefits for the individual student warrant such a placement. The cases are: "Daniel R.R. v. State Board of Education," "Greer v. Rome City School District," "Oberti v. Board of Education of the Borough of Clementon School District," and "Sacramento City Unified School District v. Rachel Holland," and were decided upon by the Fifth, Eleventh, Third, and Ninth Circuit Courts, respectively. Consistent across all the decisions is the holding that, before denying a student the opportunity to be in an inclusive setting, school districts must demonstrate that placement in the regular class with appropriate support services and supplementary aids will not provide benefit for the student. It is also noted that the U.S. Supreme Court has denied review of the Holland decision, suggesting that these appellate court decisions will be the standard for some time to come. (DB)

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ED 383 133

The "Full Inclusion" Court Cases: 1989-1994

by Diane Lipton

Editor's Introduction

The development of inclusion programs has been driven by a complex set of factors. These include the following: a growing body of research indicating that separate special education services have not had significant positive outcomes for students; parental recognition that such separate programs do not well prepare their children for the future; the efforts of the disability rights movement to promote a more inclusive society; and the effects of the broader educational restructuring efforts. Additionally, in the past five years a series of federal district court decisions has explicated the Individuals with Disabilities Education Act (IDEA) Least Restrictive Environment (LRE) requirements. Decisions in four federal appellate courts affirm the right of students with significant disabilities to attend regular education classes full time when the educational benefits for the individual student warrant such a placement.

In this Bulletin, Diane Lipton, a senior attorney at the Disability Rights Education and Defence Fund (DREDF), and the attorney in one of these cases (Holland), *describes the holdings of the courts and provides guidance for school districts, parents, and other advocates.*

Each court decision addresses the facts of the particular case. Consistent across all of them is the holding that before denying a student the opportunity to be in an inclusive setting school districts must demonstrate that placement in the regular class with appropriate support services and supplementary aids will not provide benefit for the student. This holding is applicable for all students with disabilities, including those with significant disabilities (as was true in each of these court cases). With the U.S. Supreme Court having denied review of the Holland *decision, it is likely that the decisions reported here will be the standard for some time to come.*

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Background

The principle of placing children with disabilities in the "least restrictive environment" is revolutionary when contrasted with the long-standing practice of institutionalizing and segregating children with disabilities from children without disabilities in our public schools. Recognizing that the educational system is the socializing institution for all children, Congress embraced this "least restrictive environment" principle and targeted the integration of disabled children into the public schools as a critical step to achieving full social, economic and political participation.

Although, the federal special education law, the Individuals with Disabilities Education Act (IDEA) has been in effect since 1975, mandating that children with disabilities be educated in the "least restrictive environment" (LRE) and with their non-disabled peers to the maximum extent appropriate, implementation of this mandate is highly inconsistent, at best.

In the first decade since enactment of the IDEA, several lawsuits were brought in the federal courts by parents to obtain integrated placements for disabled children, particularly for children with significant physical and/or cognitive disabilities. Some of these first cases involved efforts to move disabled children from segregated "handicapped only" schools to special education classes on regular public school campuses. Once on regular school campuses, even if placed in self-contained special education classes, disabled students would at least be in closer physical proximity to non-disabled students and opportunities for integration could occur. The integration sought after usually involved opportunities for disabled children to participate in non-academic or non-core activities and classes such as lunch, recess, art and music.

These "first generation" LRE court cases had mixed and inconsistent results with some courts finding that widespread placement in segregated "handicapped only" schools satisfied

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legal requirements and others finding that such segregation was often unnecessary and in violation of the strong preference for integration and mainstreaming embodied in the mandates of the federal law. Still other cases involved students with physical disabilities, such as cerebral palsy or deafness, in which federal courts concluded that the physical accommodations and methodologies related to these accommodations took precedence over "the least restrictive environment" issues.

By contrast, in an important case of this period, and a precursor of the more recent "inclusion" cases, in *Roncker v. Walters*, 700 F. 2d 1058 (6th Cir. 1983), the Sixth Circuit, upheld the right of a boy with mental retardation to remain in a special day class in a regular public school instead of being removed to the school district's proposed placement in a segregated "handicapped only" school. The court in *Roncker* articulated a standard underscoring IDEA's presumption in favor of regular education placement. In ordering placement in the more integrated regular public school the court stated:

Where the segregated facility is considered superior, the court should determine whether the services which make that placement superior could be feasibly provided in a non-segregated setting. If they can, the placement in the segregated school would be inappropriate under the Act.
700 F. 2d at 1063.

Despite this very favorable ruling for integration in *Roncker*, the IDEA's integration mandate was not strongly supported by the federal courts in the 1980's. Nevertheless, many parents, advocates, educators and academicians continued to push for full implementation of the LRE requirements using various non-litigation strategies.

In addition to advocacy, research on the integration of students with severe disabilities proliferated during the 1980's in many special education departments and institutes in universities around the country. The overwhelming data from this research supported and crystallized the benefits of integration for disabled and non-disabled children as well. These benefits cut across all educational domains - social, language, academic and psychological areas. The research data also demonstrated that progress in these areas positively correlates with the amount of integration. The more disabled children participate in classroom activities with non-disabled peers with appropriate support services, the better they do. During these years, there was also a proliferation of strategies and technologies developed by teachers and researchers on modifying and adapting curriculum to meet diverse student needs in the general education classroom and on promoting interactions between disabled and non-disabled children.

The 1980's also marked crucial advances establishing the civil rights of persons with disabilities, culminating in 1990 with passage of the federal Americans with Disabilities Act. Many states throughout the 1980's had also adopted state laws guaranteeing various civil rights for persons with disabilities. Disabled people and their families became increasingly visible and vocal as a political and economic force. The strength of the civil rights movement and its legislative victories had its effect on the education of children with disabilities. Parents were increasingly demanding that their children with disabilities come out of isolation and segregated environments and go to school with children without disabilities as a matter of civil rights. The education research-driven support for integration worked in concert with this values-driven civil rights approach to bring about pockets of increased integration within every state and even within school districts that otherwise had many students still segregated in special schools.

Evolving from a growing body of research, experience with integration, a shift in public policy and consciousness about disability and civil rights, a second generation of integration issues has emerged in the 1990's. Parents, especially parents of younger children, are seeking much greater levels of integration than special education classes, even those in regular public schools, can provide. Supported by data demonstrating the questionable effectiveness of "pull-out" programs and separate classes, the current trend for the organization and delivery of services for students with significant or "severe" disabilities is toward full mainstreaming or "full inclusion" models. As used here, the term "full inclusion" means full time membership and participation in the regular education classroom for students with disabilities with appropriate modification of the regular education curriculum and the provision of special education supplemental services.

The trend toward full inclusion, however, is far from universally accepted. The great majority of school districts, many still operating segregated schools, or locating special education classes in separate "portables" placed on the "back 40" of regular school campuses are highly resistant to even the idea of full inclusion. Students from racial and ethnic minority groups are still disproportionately placed in segregated facilities.

Again, in the 1990's parents are using the legal process to challenge the status quo through litigation. These cases are shaping new contours of the integration imperative. Against the back-drop of a raised political and social consciousness of disability issues as civil rights issues and with nearly two decades of experience with IDEA implementation, the courts have been faced with a new series of LRE cases - the "full inclusion" cases of the 1990's. In these cases, the federal appellate courts have been called upon to interpret the IDEA's mainstreaming provision and to establish standards for determining when regular education class placement is appropriate for a particular child.

The "full inclusion" cases starting with *Daniel R.R. v. State Board of Education El Paso Independent School District*, 874 F.2d. 1036 (5th Cir. 1989) in 1989 involve the issue of mainstreaming children with mental retardation into regular education classes full time with special education support services. To date, the four federal appellate courts to directly address this issue have all upheld the right of children with significant cognitive disabilities to attend regular education classes full time when the educational (academic and non-academic) benefits for the individual disabled child call for such

placement. These decisions mark a dramatic shift in public policy and judicial interpretation of the IDEA and the weight to be given Congressional preference for educating children with disabilities in regular public school classes.

What is frequently misunderstood about the "full inclusion" cases, however, is the fact that they do not call for full time mainstreaming for all children with disabilities. The courts acknowledge diverse student educational needs, that under the law a continuum of alternative placements must be available to meet these needs and that placement decisions must be based on individualized determinations. The courts also recognize some limitations to the integration mandate itself. Consideration of the effect on other students in the regular class and the costs of integrating students with severe disabilities into the regular education class are relevant issues in applying the legal preference for integration to a particular child.

The following discussion describes the "full inclusion" decisions in the federal Courts of Appeal and the legal standards which have evolved from these cases for determining when full time placement in a regular class with supplementary aids and services is appropriate for an individual child. The U.S. Supreme Court may have occasion to review these full inclusion cases sometime in the near future. But for the present, the courts have opened the doors to the regular education classroom for many more children with disabilities.

The Legal Analysis

The Individuals with Disabilities Education Act (IDEA), specifically requires that:

To the maximum extent appropriate, handicapped children including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
20 U.S.C. 1412(5)(B) See also, 34 C.F.R. 300.550(b).

Under this provision, it is clear that a school district has the statutory obligation to affirmatively demonstrate that a particular special education student cannot be satisfactorily educated in a regular education class, with supplementary aids and services.

Congress' strong preference for integrated placements as set forth in Section 1412(5)(B) is at the core of IDEA. Senator Stafford, the ranking minority member of the Subcommittee on the Handicapped, which had primary jurisdiction of the bill, expressed the importance of integration to reverse a long history of prejudice toward persons with disabilities.

I think that today Congress makes a very important statement. It makes a necessary statement of principle about how we intend our handicapped children to be treated in the educational process....This statement that we make will help because it is designed to bring our children together, those with and without handicaps to try to undo the prejudice in education.
121 Cong. Rec. 20432 (1975).

The importance of the integration principle to all children, disabled and non-disabled, was reiterated throughout the legislative process. Integration in school was seen as key to the ultimate goal of integration in society. Senator Stafford emphasized the importance of integration in the effort to remove attitudinal barriers.

If we allow and, indeed, encourage handicapped children and non-handicapped children to be education together as early as possible, their attitudes toward each other in later life will not be such obstacles to overcome. A child who goes to school everyday with another child who is confined to a wheelchair will understand far better in later life the limitations and abilities of such an individual when he or she is asked to work with, or is in a position to hire, such an individual.
121 Cong. Rec. 10960 (1975).

To guard against the devastating effect of negative predictions and placements based on stereotypes and misconceptions, Congress ensured that the Act contained strong procedural safeguards.

Congress recognized that the comprehensive procedures set out in IDEA are necessary to guard against unnecessarily segregated placements. Congressman Miller, the ranking member of the House Committee on Select Education, specifically referred to the "safeguards against the unnecessary placing of handicapped children in segregated classes" 121 Cong. Rec. H 7764 (1975). He stressed that the "burden of proof in terms of the effectiveness of a program ought to rest with the administrator or teacher who seeks for one reason or another to remove a child from a normal classroom...." Id. Senator Williams, the principle author of the bill restated that the procedures were intended to "ensure that handicapped children are educated with children who are not handicapped."
121 Cong. Rec. 20432 (1975).

The substantive standards established in Section 1412(5)(B) allows the removal of the child from the regular education class only when the school district can prove that the child cannot be satisfactorily educated with supplementary aids and services.

Since 1989 in *Daniel R.R. v. State Board of Education*, 874 F.2nd 1036, (5th Cir.1989) the federal courts have developed a standard for determining when placement full time in a regular education class with supplementary aids and services is appropriate and when removal to a special education class is educationally justified.

In *Daniel R.R.*, the first of these cases, the Fifth Circuit

was called upon to apply the "strong preference in favor of mainstreaming" contained in Section 1412(5)(B) to a case involving the education of a child with mental retardation in a regular education class. This decision contains an excellent framework for analyzing the application of Section 1412(5)(B) which has been adopted with some modification by other appellate courts.

The Circuit Court stated in *Daniel R.R.* that the first step is to "examine whether the state has taken steps to accommodate the handicapped child in regular education." 874 F.2d at 1048:

> The Act requires states to provide supplementary aids and services and to modify the regular education program when they mainstream handicapped children. If the state has made no effort to take such accommodating steps, our inquiry ends, for the state is in violation of the Act's express mandate to supplement and modify regular education. If the state is providing supplementary aids and services and is modifying its regular education program, we must examine whether its efforts are sufficient. The Act does not permit states to make mere token gestures to accommodate handicapped students; its requirements for modifying and supplementing regular education is broad.
> Id. (Emphasis added).

The Fifth Circuit, in *Daniel R.R.* set forth two limits to the accommodation requirements; 1) the regular education teacher is not required to devote all or most of his or her time to the disabled child, and 2) the regular education program need not be modified beyond recognition. 824 F.2d at 1049.

The next step set forth by the Court is to examine whether the child will benefit from regular education. The Circuit Court underscored the importance of not placing too much emphasis on academic achievement.

> We reiterate, however, that academic achievement is not the only purpose of mainstreaming. Integrating a handicapped child into a non-handicapped environment may be beneficial in and of itself. Thus, our inquiry must extend beyond the educational [academic] benefits that the child may receive in regular education.
>
> We also must examine the child's overall educational experience in the mainstreamed environment, balancing the benefits of regular and special education for each individual child. For example, a child may be able to absorb only a minimal amount of the regular education program, but may benefit enormously from the language models that his non-handicapped peers provide for him. In such a case, the benefit that the child receives from mainstreaming may tip the balance in favor of mainstreaming, even if the child cannot flourish academically.
> Id. at 1049.

In recognizing the purposes and benefits of mainstreaming the Fifth Circuit underscored a critical principle. The benefit test is not whether the disabled student can perform at the same level or pace as her non-disabled classmates. As the Fifth Circuit clearly articulated in *Daniel R.R.*;

> We recognize that some handicapped children may not be able to master as much of the regular education curriculum as their non-handicapped classmates. This does not mean, however, that those handicapped children are not receiving any benefit from regular education. Nor does it mean that they are not receiving all of the benefit that their handicapping condition will permit. If the child's individual needs make mainstreaming appropriate, we cannot deny the child access to regular education simply because his education achievement lags behind that of his classmates.
> *Daniel R.R.*, at 1047.

Finally, the Fifth Circuit states that the Court may examine the effect of the disabled child's presence on other children. Again, the standards are narrowly defined. If the child is "so disruptive" that the education of other students is "significantly impaired," placement in the regular education environment would not be appropriate. 874 F.2d at 1049, citing 34 C.F.R. Section 300.552 (Comment). In addition, regular education placement may not be appropriate if the disabled child requires "so much of the instructor's attention that the instructor will have to ignore the other student's needs in order to tend to the handicapped child." Id. However, the court also stated that a teacher's assistant or aide must be considered to lessen the burden on the teacher.

Following the *Daniel R.R.* decision, the Eleventh Circuit issued a decision unequivocally supporting placement in regular classes if appropriate for children with mental retardation.

In *Greer v. Rome City School District*, 950 F.2d 688 (11th Cir. 1991), the Court considered whether the school district was obligated under Section 1412(B)(5) to place a child with Down Syndrome who "functioned like a moderately mentally handicapped child...with significant deficits in language and articulation skills" (p.5) in a "regular class with non-handicapped students at her neighborhood school." Id. at 691. The facts of *Greer* are almost identical to those of the *Holland* case discussed below. The court described the facts as follows:

> The school district presented Christy's parents with a proposed IEP for Christy, which had been drawn up by school officials prior to this meeting. School officials explained to Christy's parents that she required more attention than other children in the regular kindergarten class, that she was not keeping up with the kindergarten curriculum, and that she required repeated rehearsal and practice of basic skills in an individualized setting. The school psychologist expressed his belief that, although Christy may make some progress in a regular kindergarten class, she would make more progress in a special education class. In support of his belief, the psychologist explained that special education teachers were specifically trained to work with children like Christy, but he did not give any concrete examples of other children like Christy who had progressed in special education.
> Id.

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The special education administrator testified at the administrative hearing that Christy could not make progress in the regular class but could make progress in a self-contained segregated class. Id. at 692.

At trial the administrator attempted to defend her position by stating that "it was very clear that Christy's cognitive functioning level...is a severe impairment." Id. at 693. This statement reflects a bias and predetermination that because of a "severe impairment" regular class placement is automatically discounted.

As in all of the full inclusion cases the parties presented conflicting expert testimony reflecting differing educational philosophies and biases. In *Greer* as in *Holland*, however, the Court concluded that the evidence clearly established that Christy made academic progress in the regular kindergarten. Id. at 693.

The Eleventh Circuit adopted the *Daniel R.R.* court's two part test to determine compliance with Section 1412(5)(B):

First we ask whether education in the regular classroom with the use of supplemental aids and services can be achieved satisfactorily. See Section 1412(5)(B). If it cannot and the school intends to provide special education or to remove the child from regular education, we ask, second, whether the school has mainstreamed the child to the maximum extent appropriate.
Id. at 696.

The Eleventh Circuit held that the case before it turned on the first prong of the two-part test and stated;

To resolve this issue we must examine whether the school district has taken steps to accommodate the handicapped child in the regular classroom. The regulations promulgated pursuant to the Act require school districts to provide a "continuum alternative placements...to meet the need of handicapped children...." The continuum required must:... Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. The Act itself mandates that a handicapped child be educated in the regular classroom unless such education cannot be achieved satisfactorily with the use of supplemental aids and services. Thus, before the school district may conclude that a handicapped child should be educated outside the regular classroom, it must consider whether supplemental aids and services would permit satisfactory education in the regular classroom. The school district must consider the whole range of supplemental aids and services, including resource rooms and itinerant instruction, for which it is obligated under the Act and the regulations promulgated there under to make provision.
Id.

The Court discussed several factors to be considered in deciding whether education in regular education can be achieved satisfactorily:

First, the school district may compare the educational benefits that the handicapped child will receive in a regular classroom, supplemented by appropriate aids and services, with the benefits that the handicapped child will receive in a self-contained special education environment. We caution, however, that "academic achievement is not the only purpose of mainstreaming. Integrating a handicapped child into a non-handicapped environment may be beneficial in and of itself." (Quoting *Daniel R.R.*) Accordingly, a determination by the school district that a handicapped child will make academic progress more quickly in a self-contained special education environment may not justify educating the child in that environment if the child would receive considerable non-academic benefit, such as language and role modeling, from association with his or her non-handicapped peers.

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Second, the school district may consider what effect the presence of the handicapped child in a regular classroom would have on the education of other children in that classroom....A handicapped child who merely requires more teacher attention than most other children is not likely to be so disruptive as to significantly impair the education of other children. In weighing this factor, the school district must keep in mind its obligation to consider supplemental aids and services that could accommodate a handicapped child's need for additional attention.

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Third, the school district may consider the cost of the supplemental aids and services that will be necessary to achieve a satisfactory education for the handicapped child in a regular classroom.
Id. at 697.

The Court further explained, that even if the cost of "appropriate supplemental aids and services would be incrementally more expensive than educating the child in a self-contained special education classroom," a school district may have to place the child in a regular education class. Id. at 697. However, the Court noted a limitation to the costs a school district must incur; if the cost of educating a disabled child in a regular classroom "is so great that it would significantly impact upon the education of other children in the district, then education in a regular classroom is not appropriate." Id.

In applying the facts to the law in *Greer* the Court stated that:

First, school officials failed to consider the full range of supplemental aids and services, including resource rooms and itinerant instruction, that could be provided to assist Christy in the regular classroom....School officials determined that Christy's "severe impairment" justified placement in a self-contained special education classroom without considering whether Christy could be accommodated with appropriate supplemental aids and services in a regular classroom.
Id. at 698.

In *Greer*, the Court found that the school district violated the integration requirements of Section 1412(5)(B) and the regulations which interpret that section by failing to consider the full range of supplemental aids and services which could assist Christy in the regular classroom and the benefits of regular education placement, by failing to modify the curriculum to accommodate Christy and by predetermining the placement without following the proper IEP procedures. Id. at 698.

Following *Greer*, the next court to address the specific issue of "full inclusion" of a child with developmental disabilities was the Third Circuit in *Oberti v. Board of Education of the Borough of Clementon School District*, 995 F.2d 1204 (3rd.Cir. 1993).

In *Oberti* the Third Circuit also affirmed a lower court decision that the school district failed to consider the appropriate factors in removing Rafael, an 8-year-old boy with Down Syndrome from the regular classroom and placing him in a segregated special education class. The school district maintained that Rafael could not remain in a regular classroom because of his behavior problems. Even after any behavior difficulties abated in the following years the school still did not take any steps to mainstream Rafael. Id. at 1208-1209.

In addition to identifying the factors relevant to determining the appropriateness of regular class placement, the Third Circuit emphasized that where IDEA's mainstreaming requirement is specifically at issue the burden of proving compliance with this requirement is squarely on the school district. The Court explained:

[T]he Act's strong preference in favor of mainstreaming, 20 U.S.C.1412(5)(B) would be turned on its head if parents had to prove that their child was worthy of being included, rather than the school district having to justify a decision to exclude the child from the regular classroom.
Id. at 1219.

The Court outlined the factors which should be considered in determining whether a child can be satisfactorily educated in a regular classroom: (1) whether the school district has made reasonable efforts to accommodate the child in a regular classroom with supplementary aids and services; (2) a comparison of the educational benefits available in a regular class and the benefits of a special education class; and (3) the possible negative effects of inclusion on other students.

In examining the facts of this case, the Circuit Court found that the school's efforts to accommodate Rafael in the regular class were insufficient:

The School District made only negligible efforts to include Rafael in a regular classroom. Specifically, the court found that during the 1989-90 school year, the only period during which the School District mainstreamed Rafael in a regular classroom, the School District placed Rafael in the developmental kindergarten class "without a curriculum plan, without a behavior management plan, and without providing adequate special education support to the teacher.": *Oberti II*, 801 F. Supp. at 1402: see also Id. at 1396, 1398. Further, the court found that the School District has since refused to include Rafael in a regular classroom largely based on the behavioral problems experienced by Rafael in the kindergarten class during the 1989-90 school year. Id. at 1396, 1403. For the 1990-91 year, the court found that Rafael was placed in a segregated class with "no meaningful mainstreaming opportunities." Id. at 1397, and that [t]he School District's consideration of less restrictive alternatives for the 1990-91 school year was perfunctory.
Id. at 1396. Id. at 1220-21.

The Third Circuit placed heavy emphasis on the use of supplementary aids and services as a means of accommodating a disabled child. The use of these services in the regular classrooms, the Court explained, is the key to resolving any tension between IDEA's presumption in favor of regular placement and providing an individualized program tailored to the specific needs of each disabled child. Id. at 1214.

As to the second factor, the educational benefits, the Third Circuit found that "many of the special education techniques used in the segregated [special education] class could be successfully imported into a regular classroom and that the regular teacher could be trained to apply these techniques." Id. at 1222. The Court took particular note of the "unique benefits the child may obtain from integration in a regular classroom which cannot be achieved in a segregated environment, i.e. the development of social and communication skills from interaction with nondisabled peers." Id. at 1216. The Court also noted "the reciprocal benefits of inclusion to the non-disabled students in the class" (Id. at 1217) and "found that the non-disabled children will likewise benefit from inclusion of Rafael in a regular classroom." Id. at 1221-1222. On reviewing the evidence presented by the respective experts, the Third Circuit concluded that a comparison of the educational benefits for Rafael of regular versus special education placement did not support a segregated placement or comply with the IDEA. Id. at 1222.

As for the need to modify the curriculum, the Court stated:

[W]e agree with the district court's legal conclusion that, although including Rafael in a regular classroom would require the School District to modify the curriculum, the need for such modification is "not a legitimate basis upon which to justify excluding a child" from the regular classroom unless the education of other students is significantly impaired. (citing *Oberti II*, 801 F. Supp. at 1403).
Id.

Thus, the Court in *Oberti* agreed with the Court in *Greer*, that the modification of the curriculum is significant only with respect to its effect on other students. The degree of curriculum modification needed for a particular disabled child is not determinative in and of itself.

Finally, the Third Circuit in *Oberti* addressed the third factor, the potentially "disruptive effect" of Rafael in the regular class by noting that Rafael's behavior problems several years

earlier were "exacerbated and remained uncontained due to the inadequate level of services" when Rafael was in the regular kindergarten. Id. at 1222-1223. With appropriate services there was no reason to believe any behavior problems could not be addressed in the regular class if these problems were still present. Id. The Court concluded that "consideration of the possible negative effects of Rafael in the regular classroom did not support the School District's decision to exclude him from the regular classroom."
Id. at 1223.

In the fourth and most recent of the federal appellate court decisions, *Sacramento City Unified School District v. Rachel Holland*, No.92-15608 (9th Cir. 1994) the Ninth Circuit affirmed and adopted the district court's analysis and adhered closely to the standards set forth by the Circuit Courts in *Daniel R.R.*, *Greer*, and *Oberti* to analyze the application of Section 1412(5)(B) to this case. This case involved the issue of whether Rachel Holland now an eleven year old girl who is "moderately mentally retarded" could be educated satisfactorily full time in a regular class with supplementary aids and services.

As the Ninth Circuit explained, the following factors were applied in determining if Rachel could be satisfactorily educated in the regular class with supplementary aids and services: (1)the educational or academic benefits for the child in the regular class as compared to the benefits of a special education classroom; (2) the non-academic benefits of integration with non-disabled children; (3) the effect of the presence of the handicapped child on the teacher and other children in the regular classroom; and (4) the costs of supplementary aids and services.
Holland, No. 92-15608 at 628.

Similar to the court in *Oberti*, the district court in *Holland*, did not treat the extent of curriculum modification as a separate and distinct factor. Instead the court explained that this factor is relevant only with respect to the other factors, including the degree of burden on the regular education teacher and the child's "sense of belonging" in the classroom. *Board of Education, Sacramento City Unified School District v. Holland*, 786 F. Supp. 875, 880 (E.D. Cal. 1192). This analysis is also consistent with the *Daniel R.R.* decision. In *Daniel R.R.*, the Fifth Circuit stated that curriculum modification was relevant with respect to the amount of teacher time the disabled child required and to establishing whether the child received any benefit. *Daniel R.R.*, 874 F.2d at 1048-1049. The district court in *Holland* however, did consider the extent to which Rachel's needs coincide with the needs of her classmates. He concluded, based on the testimony of Rachel's second grade teacher, Ms. Crone:

that Rachel is a full member of the second grade class. She participates in all activities. For the class as a whole, Crone's major areas of emphasis are socialization, behavior and communication. These are the same areas of emphasis in Rachel's IEP.
Id. at 881.

In applying these factors, the district court closely examined the evidence and the extensive record in *Holland*. Further description of how the district court applied the facts of this case to the legal standard is therefore, particularly instructive. With respect to the first factor, the comparative educational benefits of regular and special education classes, the district court recognized that the goals and objectives of Rachel's IEP can be achieved in the regular class, with curriculum modification and supplementary aids and services. He found credible the testimony that Rachel made "significant academic progress" in the regular education class at the Shalom School, that she is learning language and modelling other skills from her non-disabled peers and that "her motivation to learn stems from the regular class placement." Because of the conflict among the experts, the trial court found the testimony of Rachel's second grade teacher, Ms. Crone, "all the more important".Id. at 881. He cites her testimony describing Rachel's academic progress on her IEP goals, reciting both English and Hebrew alphabets, her expanded communication and language abilities and sentence length.

The court also relied on evidence that Rachel derived significant non-academic benefits from regular class placement, particularly in her social and communication skills, that Rachel had developed greater self-confidence and independence, is excited and enthusiastic about school, and "relishes the new friendships she has developed at the Shalom School." Id. at 882. The court acknowledged Ms. Crone's characterization of Rachel as being a "typical second grader" in many respects, a full member of her second grade class, an eager participant and motivated learner.
Id.

In addition to finding the benefits of regular class placement for Rachel, the court also found that the school district failed to meet the burden of showing that the special education class was at least equal or superior to the regular education class in providing academic benefit. Id. at 880. The court also found "no empirical evidence" to support the district's assertion that Rachel's goals and objectives could best be met in a special education setting. Id. at 881-882. Her school district special education teacher reported a very slow rate of learning, little progress, little interaction with peers, and testified that she derived little benefit from being "shuttled" into a regular kindergarten class for brief visits. Id. at 882. What the District's case did demonstrate most strikingly was their bias (the school district's and their assessment team's bias) against mainstreaming anyone with Rachel's I.Q. Id. at 881. Mr. Froshnider an expert witness for the school district who assessed Rachel admitted that "we have never recommended one hundred percent inclusion." R.T. 55:18-26, 101:2-5, 179:13-16.

In the district court, Judge Levi noted the sharply different points of view of the experts for the school district and the parents. He attributed the contrary assessments of Rachel to "conflicting educational philosophies":

The Diagnostic Center witnesses [school district's asses-

sors) do not believe that a child with Rachel's I.Q. can be effectively educated in a regular classroom. They believe that Rachel's education at this point should focus on functional skills, such as handling money, doing laundry, and using public transportation. Conversely, the *Holland* experts believe that all handicapped children, even children with much greater handicaps than Rachel, are best educated in regular classrooms. They believe that it is a mistake to limit Rachel's learning opportunities to functional skills.

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[B]ecause of the radically different points of view from which they start, their observations on Rachel's academic progress are by no means objective. Nonetheless, the court finds more credible the *Holland* witnesses' testimony concerning Rachel's academic progress. First, these witnesses have more background in evaluating handicapped children placed in regular classrooms, and they had greater opportunity to observe Rachel over an extended period of time in normal circumstances. Moreover, it appears that for much of the formalized testing by the Diagnostic Center, Rachel was uncomfortable and unhappy. Finally, the extent that the *Holland* witnesses have a preference for mainstreaming, it is a preference shared by Congress and embodied in the IDEA. *Holland*, 786 F. Supp. at 881.

Finally, the district court addressed two concerns related to Rachel's effect on others in the class. Id. at 883. First, based on testimony from her classroom teachers, the Court found that Rachel clearly does not present a disruption or distraction for other students. Id. With respect to the second consideration (whether Rachel's presence in the classroom is unduly burdensome on the teacher and takes up too much of the teacher's time) the Court relied on a variety of evidence. Her second grade teacher, for example, testified that Rachel presents no such burden. Id.

In the face of the consistent testimony from three regular education teachers who actually had Rachel in their classes, the school district tried to rely on the testimony of a district first grade teacher, Sharon Helmar, at the administrative hearing who speculated that Rachel would be a burden to her. This teacher never had Rachel in her class and, in fact, did not know Rachel at all. The school district also cited the teacher's testimony stating, "Ms. Helmar also made it clear that in order to pass her second grade class, the students must be able to pass a reading requirement, which Rachel could not do." *Holland*, No. 92-15608, Appellant's Brief at 22. This exemplified the District's misunderstanding. As the appellate courts in the "inclusion" cases have stated unequivocally, the law does not require disabled children to be performing at grade level in order to participate in regular classes. See, *Daniel R.R.* supra at 1047-48, *Greer* supra at 697.

Given the weight of the testimony, the district court found that based on the relevant facts, Rachel has been receiving at least, a "satisfactory education" in regular class.

On the factor of the cost of mainstreaming, the Ninth Circuit in *Holland*, affirmed the district court's findings that the school district failed to present any persuasive or credible evidence that educating Rachel in a regular classroom with appropriate services would be significantly more expensive than educating Rachel in the district's proposed setting or that the costs of regular class placement would adversely effect the education of other children in the school district. *Holland*, No. 92-15608 at 630-631.

Conclusion

The IDEA explicitly provides that children with disabilities be educated in regular education classes unless "education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. Section 1412(5)(B). The determination of whether a child has been mainstreamed to the maximum extent appropriate requires a fact - specific individualized inquiry and the application of the facts to the legal standards articulated by the appellate courts. In order for these legal standards to make a real difference in the lives of children with disabilities, educators must continue to develop and implement educational methodologies and reforms which ensure that all children can receive a meaningful education in the regular education classroom.

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